



STATE OF NEW YORK

UNEMPLOYMENT INSURANCE APPEAL BOARD

PO Box 15126

Albany NY 12212-5126

DECISION OF THE BOARD

Mailed and Filed: DECEMBER 15, 2022

IN THE MATTER OF:

Appeal Board No. 625486

PRESENT: MARILYN P. O'MARA, MEMBER

The Department of Labor issued the initial determination holding the claimant ineligible to receive Pandemic Unemployment Assistance (PUA) benefits, effective October 21, 2021 on the basis that his application was not timely. The claimant requested a hearing.

The Administrative Law Judge held a telephone conference hearing at which testimony was taken. There were appearances by and on behalf of the claimant. By decision filed August 12, 2022 (), the Administrative Law Judge sustained the initial determination.

The claimant appealed the Judge's decision to the Appeal Board. The Board considered the arguments contained in the written statement submitted by the claimant.

Our review of the record reveals that the case should be remanded to hold a hearing. Given the claimant's testimony, and the Department of Labor's position that the claimant's PUA claim was untimely, further testimony and other evidence is needed to decide the case.

In light of the testimony that the claimant did not receive a determination after he applied for benefits on July 19, 2020, the claimant shall be confronted with the monetary determination with a mail date of July 20, 2020, which is in the file but was not made part of the record. The claimant should be asked whether he

received this monetary determination and if so when, and what steps he took

after he received it. It is noted that the monetary determination was mailed to an address that is different from the claimant's current address.

The claimant shall be questioned regarding the accuracy of the address; whether and when he moved, and whether any address change was communicated to the Department of Labor. The July 20, 2020 monetary determination shall be received into evidence after the appropriate confrontation and opportunity for objection.

Given the testimony that the claimant called the Department of Labor multiple times to ask about his "PUA" claim, the claimant is directed to produce evidence of the calls he made to the Department between July 19, 2020 and October 21, 2021. This evidence shall include telephone records showing the dates of calls made to the Department, and may include notes regarding the content of those calls. The documents produced shall be received into evidence after the appropriate confrontation and opportunity for objection.

The Commissioner of Labor shall be represented at the remand hearing, and shall produce a witness prepared to testify regarding whether and how the Department of Labor complied with the provisions of Unemployment Insurance Program Letter Nos. 16-20, 16-20, Change 1, and 16-20, Change 4, regarding the administration and processing of claims for PUA benefits. Specifically, the Commissioner's witness shall be prepared to testify regarding whether the Department notified the claimant in writing of his potential eligibility for PUA after he was found ineligible for regular benefits; whether the Department considered the claimant's eligibility for PUA benefits after finding him not eligible for regular unemployment benefits, and whether the claimant's July 2020 application was converted into an application for PUA benefits, as provided for in UIPL 16-20, Change 1. If such notification, consideration, and conversion were not made, the Commissioner's representative and witness should be prepared to explain why not, and to present the Department's position regarding the timeliness of the claimant's application for PUA benefits under those circumstances.

Finally, the Hearing Section shall arrange for the claimant to testify with the assistance of a Yiddish language interpreter on the date of the remand hearing and any subsequent hearings.

The parties are placed on notice that failure to produce the documents and other evidence directed by the Board may result in the hearing Judge or the

Board taking an adverse inference against that party, and deciding that the evidence not produced would not have supported that party's position.

The hearing Judge may receive into the record any other evidence needed to decide the matter.

Now, based on all of the foregoing, it is

ORDERED, that the decision of the Administrative Law Judge be, and the same hereby is, rescinded; and it is further

ORDERED, that the case shall be, and the same hereby is, remanded to the Hearing Section to hold a hearing on the issue, upon due notice to all parties and their representatives; and it is further

ORDERED, that the hearing shall be conducted so that there has been an opportunity for the above action to be taken, and so that at the end of the hearing, all parties will have had a full and fair opportunity to be heard; and it is further

ORDERED, that an Administrative Law Judge shall render a new decision, on the initial determination holding the claimant ineligible to receive Pandemic Unemployment Assistance (PUA) benefits, effective October 21, 2021 on the basis that his application was not timely, which shall be based on the entire record in this case, including the testimony and other evidence from the original and the remand hearings, and which shall contain appropriate findings of fact and conclusions of law.

MARILYN P. O'MARA, MEMBER